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8 **IN THE UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF CALIFORNIA**
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12 **UNITED STATES OF AMERICA,**)

13 **Plaintiff,**)

14 **vs.**)

15 **URSULA M. NASCH,**)

16 **Defendant.**)
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6: 99 mj 00218 HGB ALL

**ORDER GRANTING
REQUEST FOR ONE TIME
WAIVER OF ELECTRONIC
FILING REQUIREMENT**

**ORDER DENYING PETITION
FOR EXPUNGEMENT
PURSUANT TO CALIFORNIA
PENAL CODE SECTION
1203.4.**

On January 2, 2004, Defendant filed in paper format a request for a one time waiver of the electronic filing requirement. Accompanying this request is a supporting declaration of Attorney Robert E. Daye, and a proposed order granting the request. Also on January 2, 2007, Defendant filed a petition for expungement pursuant to the California Penal Code, and a proposed order granting the petition.

In her petition, Defendant seeks expungement of a conviction, pursuant to a guilty plea, of violation of 36 CFR 4.23(a)(1), operating a motor vehicle while under the influence

1 of alcohol , entered February 15, 2000. Defendant asserts that she has completed the terms
2 of probation for that conviction, is not serving a sentence for any offense, and is not on
3 probation for an y offense. She now seeks expungement of her conviction pursuant to
4 California Penal Code Section 1203.4, which provides in part as follows:

5 (a) In any case in which a defendant has fulfilled the conditions of probation for the
6 entire period of probation, or has been discharged prior to the termination of the
7 period of probation, or in any other case in which a court, in its discretion and the
8 interests of justice, determines that a defendant should be granted the relief available
9 under this section, the defendant shall, at any time after the termination of the period
10 of probation, if he or she is not then serving a sentence for any offense, on probation
11 for any offense, or charged with the commission of any offense, be permitted by the
12 court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea
13 of not guilty; or, if he or she has been convicted after a plea of not guilty, the court
14 shall set aside the verdict of guilty; and, in either case, the court shall thereupon
15 dismiss the accusations or information against the defendant and except as noted
16 below, he or she shall thereafter be released from all penalties and disabilities
17 resulting from the offense of which he or she has been convicted, except as provided
18 in Section 13555 of the Vehicle Code.

19 The issue of expungement of records of criminal convictions is discussed thoroughly
20 in United States of America v. Crowell, 374 F.2d 790 (9th Cir. 2004). In that opinion, the
21 court states in part as follows:

22 Congress has not expressly granted to the federal courts a general power to
23 expunge criminal records. Nevertheless, we have asserted that federal courts have
24 inherent authority to expunge criminal records in appropriate and extraordinary cases.
25 We have held that in criminal proceedings “district courts possess ancillary
26 jurisdiction to expunge criminal records. That jurisdiction flows out of the
27 congressional grant of jurisdiction to hear cases involving offenses against the United
28 States pursuant to 18 U.S.C. § 3231.” [United States v. Sumner, 226 F.3d 1005, 1014
(9th Cir.2000).] We have also held, however, that district courts do not have the
power “to expunge a record of a valid arrest and conviction solely for equitable
considerations,” because “the expungement of the record of a valid arrest and
conviction usurps the powers that the framers of the Constitution allocated to
Congress, the Executive, and the states.” Id. Accordingly, “a district court's ancillary
jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or
to correcting a clerical error.” Id.

23 In this case, Defendant does not claim that her arrest or conviction was unlawful, or that any
24 clerical error was made. Therefore, this court lacks jurisdiction to expunge the record of her
25 criminal conviction.
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In light of the foregoing, IT IS HEREBY ORDERED as follows:

1. Defendant's request for a one time waiver of the electronic filing requirement is HEREBY GRANTED;
2. The Clerk of the Court is directed to scan into the electronic filing system the documents which Defendant filed with the court in paper format on January 2, 2004;
3. Defendant's Petition for Expungement Pursuant to California Penal Code Section 1203.4 is HEREBY DENIED;
4. The Clerk of the Court is DIRECTED to serve Defendant with a paper copy of this order.

IT IS SO ORDERED.

Dated: January 30, 2007
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/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE